

Huff, Gwen

From: Osann, Ed [eosann@nrdc.org]
Sent: Tuesday, September 28, 2010 6:55 PM
To: Water Use Efficiency
Cc: Alemi, Manucher; cchorneau@ccp.csus.edu; Ronnie Cohen; Obegi, Doug
Subject: Additional U5 Process Water Comment

Mr. Alemi –

Although the Department has not specifically asked for additional comments following yesterday's meeting of the U5 Work Group on Process Water in Sacramento, the repeated requests throughout the meeting by water suppliers seeking lax criteria for eligibility to exclude process water led me to believe that an additional comment for the record is warranted.

As reflected in the draft regulation that was under discussion yesterday (Sept 24 draft), DWR is considering three potential pathways through which a water supplier might qualify to exclude process water from its gross water use calculation. What appeared to be lost in yesterday's discussion is that *each* of these pathways has to be consistent with the language of the Act. Each pathway can only be open to water suppliers that have a substantial percentage of industrial water use in their service area. The *de minimus* percentages of industrial water use that would allow for eligibility (5% in the DWR draft and 2.5% in the CUWA proposal) simply don't comport with a plain reading of the statute.

Some water suppliers have entered the stakeholder process with the conception that all water suppliers should have a chance to demonstrate that irreducible process water usage will result in a burdensome shift of their conservation savings targets to other customer sectors. However, the statute is not constructed this way. The legislation could easily have been written to allow *any* water supplier to exclude process water in order to prevent a shifting of the burden of compliance to other sectors. Instead, the law limits the eligibility to exclude process water to suppliers that have a *substantial percentage of industrial use* in their respective service areas – which the Department has found in common technical usage to mean 20 % or more.

We respectfully urge the Department to reject formulations that would allow water suppliers with an unsubstantial percentage of industrial water use within their service area to claim eligibility for process water exclusion. To do otherwise would undermine the ability of the state to meet the 20 X 2020 statutory objective and invite litigation and uncertainty in future years.

Edward R. Osann
Senior Policy Analyst
Natural Resources Defense Council
1314 Second Street
Santa Monica, CA 90401
310-434-2349
eosann@nrdc.org